



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
Phone 800-227-8917  
<http://www.epa.gov/region08>

Ref: 8ENF-L

AUG 10 2005

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Debra Carlton  
1516 Yellowstone Hwy  
Cody, WY 82414

Blackwater Lodge, Inc.  
Debra Carlton, Registered Agent  
1516 Yellowstone Hwy  
Cody, WY 82414

Re: Complaint and Notice of  
Opportunity for Hearing  
Docket No. SDWA-08-2005-0046  
PWS ID # WY56001424

Dear Ms. Carlton:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing ("complaint") filed against Debra Carlton and Blackwater Lodge, Inc. ("Respondents"), under section 1414 of the Safe Drinking Water Act ("SDWA") 42 U.S.C § 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that Respondents failed to comply with an Administrative Order and an Amended Administrative Order, Docket Number SDWA-8-99-02, issued on January 7, 1999 and April 10, 2001, respectively, under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). These violations are specifically set out in the complaint.

By law, Respondents have the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If Respondents do not respond to this complaint within 30 days of receipt, a default judgment may be entered and the



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proposed civil penalty may be assessed without further proceedings. In Respondents' answer Respondents may request a hearing. Respondents have the right to be represented by an attorney at any stage of these proceedings.

If Respondents do not contest the findings and assessments set forth in the complaint, Respondents may resolve the action by paying the proposed penalty in full pursuant to the Quick Resolution provision (40 C.F.R. § 22.18). Instructions to pay the penalty in this manner are described in the complaint under the section entitled "Terms of Payment for Quick Resolution."

Whether or not Respondents request a hearing, Respondents may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondents may appear at the conference itself and/or be represented by counsel.

EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8.

A request for an informal conference does not extend the 30 day period during which Respondents must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneous with the adjudicatory hearing.

If Respondents have questions specific to the violations or proposed penalty, the most knowledgeable people on my staff regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at (303) 312-6481 or Michelle Marcu, Enforcement Attorney, who can be reached at (303) 312-6921.

We urge Respondents' prompt attention to this matter.

Sincerely,



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

cc: Larry Robinson, WYDEQ  
Dr. Karl Musgrave, WYDOH



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Ref: 8ENF-L

AUG 10 2005

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Tim A. French, Chairman  
Park County Commissioners  
1002 Sheridan Avenue  
Cody, WY 82414

Re: Notice of Complaint and Notice of Opportunity for  
Hearing Against  
Debra Carlton and Blackwater Lodge, Inc.  
Docket No. SDWA-08-2005-0046

Dear Mr. French:

Pursuant to section 1414(a)(2)(B) of the 1996 amendments to the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300g-3(a)(2)(B), the Environmental Protection Agency (EPA) is required to notify an appropriate locally elected official of any action taken in a State that does not have primary enforcement authority for public water systems. The State of Wyoming does not have primary enforcement authority for public water systems under the SDWA.

EPA is filing a Complaint and Notice of Opportunity for Hearing ("complaint") under section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), against Debra Carlton and Blackwater Lodge, Inc. ("Respondents") for the Blackwater Lodge public water system in Cody, Wyoming. Respondents are in violation of an Administrative Order and Amended Administrative Order ("Orders"), Docket Number SDWA-8-99-02, which required compliance with the National Primary Drinking Water Regulations ("NPDWRs"). Respondents failed to monitor for total coliform bacteria and nitrate, failed to provide public notice of the violations and failed to report violations to EPA, in violation of the Orders.

A copy of this complaint is enclosed for your information. The complaint does not require any response or action by the County Commission.



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If you have questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at (800) 227-8917 extension 6481 or Michelle Marcu, Enforcement Attorney, who can be reached at (800) 227-8917 extension 6921.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carol Rushin".

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

2005 AUG 10 PM 2:30

IN THE MATTER OF

Debra Carlton and  
Blackwater Lodge, Inc.  
Cody, Wyoming  
PWS ID# WY56001424

## Respondents

Proceedings under section 1414(g)  
of the Safe Drinking Water Act,  
42 U.S.C. § 300g-3(g)

) Docket No. SDWA-08-2005-0046

## COMPLAINT

Complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to EPA's "Consolidated Rules of

<sup>1</sup>In an action for violations occurring after March 15, 2004, a penalty of up to \$27,500 is authorized. 69 Fed. Reg. 7121 (2004) (codified at 40 C.F.R. § 19.4).

Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. ("Consolidated Rules of Practice")(Complainant's Attachment 1).

### **GENERAL ALLEGATIONS**

The following general allegations apply to each count of this complaint:

1. Debra Carlton is an individual and Blackwater Lodge, Inc. ( collectively "Respondents") is a corporation under the laws of the State of Wyoming as of January 18, 1995, and therefore are "person(s)" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12) and 40 C.F.R. § 141.2.
2. According to the Wyoming Secretary of State, Blackwater Lodge's corporate status, while still active, became defunct due to Administrative Dissolution on August 21, 2000.
3. On July 11, 2001, the State of Wyoming reinstated Blackwater Lodge, Inc. as an active corporation no longer defunct due to Administrative Dissolution.
4. Respondents own and/or operate a system, the Blackwater Lodge Water System (the "System"), located in Park County, Wyoming for the provision to the public of piped water for human consumption through pipes or other constructed conveyances.
5. The System has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "non-community water system" within the meaning of 40 C.F.R. § 141.2.

6. Respondents own and/or operate a public water system and are therefore "supplier(s) of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondents are therefore subject to the requirements of part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. part 141.
7. The System is supplied solely by a ground water source consisting of one spring. The System serves approximately 300 persons per day from June 15th - September 15th, has 16 service connections and has been identified as a public water system since January, 1997.
8. On January 7, 1999, EPA issued an Administrative Order ("Administrative Order") (Docket No. SDWA-8-99-02) to Respondents pursuant to section 1414(g)(1) of the Act, 42 U.S.C. § 300g-3(g)(1), citing violations of the National Primary Drinking Water Regulations ("NPDWRs") (40 C.F.R. part 141). A copy of the Administrative Order is attached to this complaint and incorporated herein (Complainant's Attachment 2).
9. The Administrative Order required Respondents, among other things, to achieve compliance with the NPDWRs that EPA found Respondents violated.
10. On April 10, 2001, EPA issued an Amended Administrative Order ("Amended Administrative Order") (Docket No. SDWA-8-99-02) to Respondents pursuant to section 1414(g)(1) of the Act, 42 U.S.C. § 300g-3(g)(1), citing additional violations of the NPDWRs which occurred since EPA issued the Administrative Order. A copy of the Amended Administrative Order is attached to this complaint and incorporated herein (Complainant's Attachment 3).

11. The Amended Administrative Order required Respondents, among other things, to achieve compliance with the NPDWRs that EPA found Respondents violated.
12. On March 16, 2003, EPA sent Respondents a "Violation of Administrative Order" letter citing Respondents' failure to comply with the Amended Administrative Order and the NPDWRs. (Complainant's Attachment 4).

### SPECIFIC ALLEGATIONS

#### **Count I**

#### **Failure to Monitor for Total Coliform Bacteria**

13. 40 C.F.R. § 141.21 requires the owner and/or operators of non-community public water systems to monitor the water at least once per quarter to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria as stated in 40 C.F.R. § 141.63.
14. Page 4, paragraph 1 of the "Order" section of the Administrative Order required Respondents to comply with the requirement of 40 C.F.R. § 141.21(a) to perform quarterly bacteriological monitoring to comply with the MCLs as stated in 40 C.F.R. § 141.63. The paragraph also required Respondents to report analytical results to EPA within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).
15. Page 6, paragraph 1 of the "Order" section of the Amended Administrative Order required Respondents to comply with the requirement of 40 C.F.R. § 141.21(a) to perform quarterly bacteriological monitoring to comply with the MCLs as stated in 40 C.F.R. § 141.63. The paragraph also required Respondents to report analytical results to



EPA within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

16. Respondents failed to perform quarterly bacteriological monitoring in the third quarter (July through September) of 2001; the second quarter (April through June) and third quarter (July through September) of 2002; the third quarter (July through September) of 2003; the second quarter (April through June) and third quarter (July through September) of 2004, in violation of the Administrative Order, the Amended Administrative Order and 40 C.F.R. § 141.21(a).

**Count II**  
**Failure to Monitor for Nitrate**

17. 40 C.F.R. § 141.23(d) requires public water systems to monitor their water annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.
18. Page 8, paragraph 7 of the "Order" section of the Amended Administrative Order required Respondents to comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate MCL appearing at 40 C.F.R. § 141.62(b) and also required Respondents to report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).
19. Respondents failed to monitor their water for nitrate in 2001, 2002 and 2004, in violation of the Amended Administrative Order and 40 C.F.R. § 141.23(d).

**Count III**  
**Failure to Notify the Public**  
**of NPDWRs Violations**

20. 40 C.F.R. § 141.32 requires the owner or operator of a public water system to notify the public of any MCL, monitoring requirement, or treatment technique violation. Owners or operators of public water systems are required to perform such notifications to the public in the manner provided in 40 C.F.R. § 141.32 prior to May 6, 2002, and in the manner provided in 40 C.F.R. part 141 subpart Q on or after May 6, 2002.
21. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any violation of the NPDWRs, including violations of monitoring requirements.
22. Pages 4-5, paragraph 2 of the "Order" section of the Administrative Order required Respondent, within thirty days of the effective date of the Administrative Order, to provide a public notice for the violations specified in the Administrative Order to return to compliance with 40 C.F.R. § 141.32. Additionally, the paragraph required Respondent to comply with the public notification requirements at 40 C.F.R. § 141.32 following any future NPDWR violation and to submit a copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).
23. Pages 15-16, paragraph 16 of the "Order" section of the Amended Administrative Order required Respondents, by June 30, 2001, to provide a public notice for the violations specified in the Amended Administrative Order and to comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR

violation and submit a copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).

24. Respondents failed to provide notice to the public of the violations identified in the Administrative Order, the Amended Administrative Order and the violations alleged in Counts I and II above, and failed to submit a copy of the public notice to EPA within 10 days of completion of the public notice, in violation of the Administrative Order, the Amended Administrative Order and 40 C.F.R. §§ 141.32, 141.201 and 141.31(d).

**Count IV**  
**Failure to Report Noncompliance**  
**with NPDWRs to EPA**

25. 40 C.F.R. § 141.31(b) requires that except where a different period is specified by 40 C.F.R. part 141, public water systems shall report any failure to comply with the NPDWRs (40 C.F.R. part 141) to EPA within 48 hours.
26. 40 C.F.R. § 141.21(g)(2) requires public water systems that have failed to comply with a coliform monitoring requirements under 40 C.F.R. § 141.21 to report the monitoring violation to EPA within ten days after the system discovers the violation.
27. Page 5, paragraph 3 of the "Order" section of the Administrative Order and page 17, paragraph 19 of the Amended Administrative Order required Respondents to comply with 40 C.F.R. § 141.31(b) by reporting to EPA any failure to comply with any NPDWR (40 C.F.R. part 141) within 48 hours.
28. Pages 16-17, paragraph 18 of the "Order" section of the Administrative Order required Respondents to comply with 40 C.F.R. § 141.21(g)(2) by reporting to EPA any failure to

comply with coliform monitoring requirements within 10 days after the system discovers the violation.

29. Respondents failed to report to EPA instances of noncompliance detailed in the Counts I, II and III, as set forth above, in violation of the Administrative and Amended Administrative Orders and 40 C.F.R. §§ 141.21(g)(2) and 141.31(b).

#### **PROPOSED ADMINISTRATIVE CIVIL PENALTY**

Section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), authorizes the Administrator to assess an administrative civil penalty of up to \$25,000<sup>2</sup> for violation of an administrative order issued under section 1414(g)(1) of the Act. The proposed penalty has been determined in accordance with section 1414 of the Act, 42 U.S.C. § 300g-3. For purposes of determining the amount of any penalty to be assessed to calculate a rational and consistent penalty, EPA has taken into account the seriousness of the violation, the population at risk, and other appropriate factors, including Respondents' degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, as known to Complainant at this time. Based on the above factors, EPA proposes to assess an administrative civil penalty of Two Thousand Five Hundred Dollars (\$2,500) against Respondents for violation of the Administrative and Amended Administrative Orders.

#### **TERMS OF PAYMENT FOR QUICK RESOLUTION** **(40 C.F.R. § 22.18)**

If Respondents does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to the Quick Resolution

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<sup>2</sup> See *supra* note 1.

provision of the Consolidated Rules of Practice (40 C.F.R. § 22.18). If such payment is made within 30 calendar days of receipt of this Complaint, then no Answer need be filed. If

Respondents elect to pay the penalty according the Quick Resolution provision, penalty payment must be made by certified or cashier's check for \$2,500 payable to "Treasurer, United States of America," and remitted to:

Mellon Bank  
EPA Region 8  
(Regional Hearing Clerk)  
P.O. Box 360859M  
Pittsburgh, PA. 15251

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check. A copy of the check must be mailed simultaneously to the attorney listed below and the EPA Regional Hearing Clerk at the address below:

Tina Artemis  
Region 8 Hearing Clerk (8RC)  
U.S. Environmental Protection Agency  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

Payment of the penalty in this manner does not relieve Respondents of their obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondents to the assessment of the proposed penalty and a waiver of Respondents' right to a hearing on this matter.

**OPPORTUNITY TO REQUEST A HEARING**

As provided in section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), a respondent has the right to request a public hearing on any material fact alleged in this complaint or on the appropriateness of the proposed penalty or to assert that respondent is entitled to judgment as a matter of law.

If Respondents wish to request a hearing, Respondents must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within thirty (30) calendar days after this complaint is served. If this complaint is served by mail, Respondents have an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c).

If Respondents request a hearing in their answer, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, Respondents have the right under the Act to elect a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551, et seq. ("APA"). To exercise this right, Respondents must include in their answer a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will recaption the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42) Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

Respondents' answer must be in writing. An original and one copy of the answer must be sent to the attorney listed below and the EPA Regional Hearing Clerk at the address below:

Tina Artemis  
Region 8 Hearing Clerk (8RC)  
U.S. Environmental Protection Agency  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

### **FAILURE TO FILE AN ANSWER**

To avoid entry of a default order against Respondents pursuant to 40 C.F.R. § 22.17 for the full amount of the penalty proposed in this complaint, Respondents must file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint. Respondents' answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this complaint with regard to which Respondents have any knowledge. Respondents' answer should state (1) the circumstances or arguments which are alleged to constitute grounds of defense, (2) a concise statement of the facts which Respondents intend to place at issue in the hearing, and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of the allegation.

### **SETTLEMENT CONFERENCE**

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation, in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. part 22. If a settlement can be reached, its terms shall be

Debra Carlton/Blackwater Lodge, Inc.  
Page 12 of 12

expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer. A request for a settlement conference, or any questions that Respondents may have regarding this complaint, should be directed to the attorney listed below.

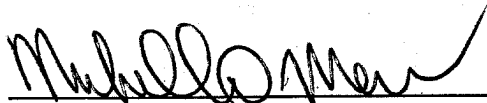
Dated this 9<sup>th</sup> day of August 2005.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Complainant.



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice



Michelle D. Marcu  
Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466  
Telephone Number: (303) 312-6921  
Facsimile Number: (303) 312-6953



IN THE MATTER OF:

Debra Carlton and Blackwater  
Lodge, Inc.

DOCKET NUMBER:

SDWA-08-2005-0046

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with Attachments 1 through 4 were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was delivered as follows:

Via CERTIFIED MAIL/RETURN RECEIPT REQUESTED to:

Debra Carlton  
1516 Yellowstone Hwy  
Cody, WY 82414

Blackwater Lodge, Inc.  
Debra Carlton, Registered Agent  
1516 Yellowstone Hwy  
Cody, WY 82414

and

Tim A. French, Chairman  
Park County Commissioners  
1002 Sheridan Avenue  
Cody, WY 82414

Date: 8/10/05

By: Judith McTernan  
Judith McTernan



develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input to the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. This rule does not impose any enforceable duties on these entities. Instead, it merely revises the procedural rules governing EPA's administrative enforcement proceedings.

#### F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the E.O. 13045 because it is not "economically significant" as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

#### G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the

development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 22

Environment protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 30, 1999.

Carol M. Browner,  
Administrator.

Therefore, 40 CFR part 22 is revised to read as follows:

### PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS

#### Subpart A—General

##### Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 Ex parte discussion of proceeding.
- 22.9 Examination of documents filed.

#### Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

#### Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

#### Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

#### Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

#### Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

1st Page only





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500  
DENVER, COLORADO 80202-2466

JAN 8 1999

RECEIVED  
OFFICE OF ENFORCEMENT,

JAN 21 1999

Ref: 8ENF-T

Blackwater Lodge, Inc  
Ms. Debra L. Carlton  
1516 Northfork HWY  
Cody, Wyoming 82424

COMPLIANCE & ENVIRONMENTAL  
JUSTICE

Re: Administrative Order  
Docket No. SDWA-8-99-02  
PWS ID #WY5601424N

Dear Ms. Carlton:

Enclosed you will find a document entitled "Administrative Order" (Order), which the Environmental Protection Agency (EPA) has issued under the authority of the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300f et seq., and its implementing regulations. Please note that the effective date of the enclosed Order has been changed to reflect the fact that the previous attempts to send the Order by Certified Mail were refused. The effective date of the Order is now January 7, 1999. Within the next 10 days, please provide EPA with any new information that you believe the Agency is not aware of relating to the alleged violations in the Order.

If you have any additional information or questions, or wish to have an informal conference with EPA, please call me at (303) 312-6499 or write to the address on the letterhead and include the mailcode 8ENF-T. If you are represented by an attorney or have legal questions please call Michelle Marcu at (303) 312-6921.

We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Marshall Pullman".

Marshall Pullman,  
Environmental Specialist  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 500  
DENVER, CO 80202-2466

~~OCT 30 1998~~ *CSM*  
JAN 7 1999

Ref: 8ENF-T

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Blackwater Lodge, Inc.  
Ms. Debra L. Carlton  
1516 Northfork HWY  
Cody, WY 82424

RECEIVED  
OFFICE OF ENFORCEMENT,

JAN 21 1999

COMPLIANCE & ENVIRONMENTAL  
JUSTICE

Re: Administrative Order  
Docket No. SDWA 8-99-02  
PWS ID # 5601424N

Dear Ms. Carlton:

Enclosed you will find a document entitled "Administrative Order" (Order) which the U.S. Environmental Protection Agency (EPA) has issued under the authority of the Safe Drinking Water Act (SDWA), 42 U.S.C. §300f et seq., and its implementing regulations. Among other things, the Administrative Order finds that you are a public water supplier as defined by the SDWA and that you have violated 40 CFR §§141.21(a), 141.32, and 141.31(b) for failure to monitor for total coliform bacteria; for failure to provide public notice of the above violations; and for failure to report the above violations to EPA.

If you comply with the enclosed Order for a period of at least twelve months, EPA may choose to close the Order. Violating the enclosed Order may lead to (1) a penalty of up to \$27,500 per day per violation of the Order, (2) a separate such penalty for violating the regulations themselves, and/or (3) a court injunction ordering you to comply.

Please note that the effective date of the enclosed Order is the date of issuance. Within the next 10 days, please provide EPA with any new information that you believe the Agency is not aware of relating to the alleged violations in the Order. The information should be sent to Marshall Pullman at the address on the letterhead and include the mailcode 8ENF-T, or call (303) 312-6499.



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If you have any questions or wish to have an informal conference with EPA, please call Marshall Pullman at (303) 312-6499 or write Mr. Pullman at the address on the letterhead and include the mailcode 8-ENF-T. If you are represented by an attorney or have legal questions, please call Michelle Marcu at (303) 312-6921.

We urge your prompt attention to this matter.

Sincerely,

*Connally Mears*

Connally Mears, Acting Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 500  
DENVER, CO 80202-2466

OCT 30 1998

Ref: 8-ENF-T

Mr. Beryl Churchill  
County Commissioner  
1002 Sheridan Ave.  
Cody, WY 82414

Re: Notice of SDWA Action Against  
Blackwater Lodge Inc.  
PWS ID # 5601424N

Dear Mr. Churchill:

Pursuant to Section 1414(a)(2)(B) of the 1996 amendments to the Safe Drinking Water Act (SDWA), the U.S. Environmental Protection Agency is required to notify an appropriate locally elected official of any action taken in a State that does not have primary enforcement authority for public water systems. The State of Wyoming does not have primary enforcement authority for public water systems under the SDWA.

An Administrative Order is being issued under Section 1414 of the SDWA to Blackwater Lodge, Inc. located in Cody, Wyoming. This Order requires that the public water system take measures to return to compliance with the SDWA and the National Primary Drinking Water Regulations. Blackwater Lodge, Inc. is in violation of 40 CFR Sections 141.21(a), 141.32, and 141.31(b) for failure to monitor for total coliform bacteria; for failure to provide public notice of non-compliance; and for failure to report violations to EPA.

A copy of this Order is enclosed for your information. The Order does not require any response or action by the County Commission. If you have any questions regarding this Order, please contact Marshall Pullman at (303) 312-6499.

Sincerely,

A handwritten signature in cursive script that reads "Connally Mears".

Connally Mears, Acting Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII.

98 OCT 30 AM 11:06

IN THE MATTER OF )

Blackwater Lodge, Inc. )  
Cody, Wyoming )

Respondent )

Proceedings under 1414(g) )  
of the Safe Drinking Water )  
Act, 42 U.S.C. §300g-3(g) )

FILED  
EPA REGION VIII  
HEARING CLERK

Docket No. 8-SDWA-8-99-02

ADMINISTRATIVE ORDER

STATUTORY AUTHORITY

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by §1414(g) of the Safe Drinking Water Act (the "Act"), 42 U.S.C. §300g-3(g) and its implementing regulations, as properly delegated to the Supervisors of the Technical and Legal Enforcement Program of the Office of Enforcement, Compliance and Environmental Justice, EPA Region VIII.

FINDINGS

1. Blackwater Lodge, Inc. (Respondent) is a corporation under the laws of the state of Wyoming as of January 18, 1995 and therefore a "person" within the meaning of 40 CFR §141.2.
2. Debra L. Carlton owns and/or operates the Blackwater Lodge, Inc. Water System (the "System") located in Park County, Wyoming for the provision to the public of piped water for human consumption.

3. Blackwater Lodge, Inc. Water System is supplied by a ground water source, has at least 15 service connections and/or regularly serves at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" within the meaning of §1401(4) of the Act, 42 U.S.C. §300f(4), and a "non-community water system" within the meaning of 40 CFR §141.2.
4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of §1401(5) of the Act, 42 U.S.C. §300f(5) and 40 CFR §141.2. Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. §300g et seq., and its implementing regulations, 40 CFR Part 141, which are also known as the National Primary Drinking Water Regulations (NPDWRs).
5. According to a June 18, 1997, sanitary survey conducted by EPA, Respondent operates a system that is supplied solely by a ground water source consisting of one spring which has been in service since 1940 and serves approximately 50 persons.

FINDINGS OF VIOLATION

I

1. 40 CFR §141.21(a) requires the owner and/or operator of a public water system to monitor the System's water at least once per quarter that the System provides water to the public to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria as stated in 40 CFR §141.63.
2. Respondent failed to monitor the System's water for contamination by total coliform bacteria during the 2nd and 3rd quarters (April - September) 1997 and the 2nd and 3rd quarters (April - September) 1998, in violation of 40 CFR §141.21(a).

II

1. 40 CFR §141.32 requires owners and/or operators of a public water system to notify the public of any MCL, monitoring requirement, or treatment technique violation.
2. Respondent has not provided public notice of the noncompliance detailed in Section I, in violation of 40 CFR §141.32.

III.

1. 40 CFR §141.31(b) requires public water systems to report any failure to comply with any NPDWRs (40 CFR Part 141) to EPA within 48 hours.

2. Respondent failed to report to EPA the noncompliance detailed in Sections I, and II, in violation of 40 CFR §141.31(b).

ORDER

Based on the foregoing findings, and pursuant to §1414(g) of the Act, IT IS ORDERED:

1. No later than 30 days from the effective date of this Order, Respondent shall comply with 40 CFR §141.21(a) to perform quarterly bacteriological monitoring. Respondent shall report analytical results to EPA within the first 10 days of the end of the monitoring period, as required by 40 CFR §141.31(a).
2. No later than 90 days from the effective date of this Order, Respondent shall provide a notice to the public of the violations specified under Findings of Violation in this Order to return to compliance with 40 CFR §141.32. This notice shall be given by any one of the following methods, at the election of the Respondent: (1) by publication in a daily or weekly newspaper of general circulation in the area served by the System, (2) by hand delivery to each user of the System, or (3) by continuous posting in conspicuous places in the area served by the System. Posting must continue for as long as the violation exists, but in no

event for fewer than ten days. If the initial notification was by newspaper or by hand delivery, then the Respondent shall provide repeat notices of failure to monitor by either hand delivery or mail delivery at least every three months for as long as the violation exists.

Respondent shall submit copies of the public notice to EPA within 10 days of completion of the public notice, as required by 40 CFR §141.31(d).

3. Upon the effective date of this Order, Respondent shall comply with 40 CFR §141.31(b) by reporting any failure to comply with any NPDWRs (40 CFR Part 141) to EPA within 48 hours.
4. Reporting requirements specified in this Order shall be provided by certified mail to:

Marshall Pullman  
U.S. EPA Region VIII (8-ENF-T)  
999 18th Street, Suite 500  
Denver, Colorado 80202-2466

GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 CFR §141.1 et seq., or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forego any civil or any criminal action otherwise authorized under the Act.

2. Violation of any term of this Order may subject the Respondent to an administrative civil penalty of up to \$25,000 under §1414(g)(3)(B) of the Act, 42 U.S.C. 300g-3(g)(3)(B) or a civil penalty of not more than \$27,500 per day of violation, assessed by an appropriate U.S. District Court, under §1414(g)(3)(A) and (C) of the Act, 42 U.S.C. 300g-3(g)(3)(A) and (C).
3. Violation of any requirement of the SDWA or its implementing regulations may subject Respondent to a civil penalty of not more than \$27,500 per day of violations, assessed by an appropriate U.S. District Court, under §1414(g)(3)(A) and (C) of the Act, 42 U.S.C. §300g-3(g)(3)(A) and (C).
4. The effective date of this Order shall be the date of issuance of this Order.

Issued this \_\_\_\_\_ day of JAN 7 1999 <sup>Cbm</sup>, 1998.  
~~OCT 30 1998~~

Michael T. Risner  
Michael T. Risner, Director  
David J. Janik, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Connally Mears  
Connally Mears, Acting Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 300  
DENVER, COLORADO 80202-2466

Ref: 8ENF-T

APR 10 2001

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Debbie Carlton, Owner  
Blackwater Lodge, Inc.  
1516 Northfork HWY  
Cody, Wyoming 82424

Re: Amended Administrative Order  
Docket No. SDWA 8-99-02  
PWS ID #WY5601424N

Dear Ms. Carlton:

This letter is to inform you officially that the U.S. Environmental Protection Agency (EPA) has amended the Administrative Order, Docket No. SDWA 8-99-02, issued to the Blackwater Lodge, Inc. on January 7, 1999. This decision is based upon EPA's determination that a strong possibility exists that your drinking water source, the Blackwater Spring, is under the direct influence of surface water. Among other things, the "Amended Administrative Order" (Order) finds that you are a public water supplier as defined by the SDWA and that you have violated the National Primary Drinking Water Regulations (NPDWRs) at 40 CFR §§141.21(a), 141.63(b), 141.23(d), 141.201, 141.21(g)(1), 141.21(g)(2), and 141.31(b) for: failure to monitor for total coliform bacteria; exceeding the acute maximum contaminant level for total coliform bacteria; failure to monitor for nitrate; failure to provide public notice of the above violations; failure to report the acute MCL violation for total coliform bacteria to EPA no later than the end of the next business day; failure to report total coliform bacteria monitoring violations to EPA within 10 days after discovering the violation; and for failure to report SDWA violations to EPA within 48 hours.

If you comply with the enclosed Order for a period of at least twelve months, EPA may choose to close the Order. Violating the enclosed Order may lead to (1) a penalty of up to \$27,500 per day of violation of the Order, (2) a separate such penalty for violating the regulations themselves, and/or (3) a court injunction ordering you to comply.

EPA encourages your public water system operator or manager to complete an operator certification training course conducted by the Wyoming Rural Water Association (RWA). The RWA periodically holds training sessions for public water supply



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operators, and may be reached at (307) 436-8636.

Also enclosed is a Small Business Regulatory Enforcement and Fairness Act (SBREFA) Section 22 information sheet. The SBREFA sheet notifies small businesses of their right to comment on regulatory enforcement activities, and provides information on compliance assistance. Dissemination of this information sheet does not constitute an admission or determination by EPA that the business, organization or governmental jurisdiction is a small entity as defined by SBREFA.

Please note that the effective date of the enclosed Order is the date of issuance. Within the next 10 days, please provide EPA with any new information that you believe the Agency is not aware of relating to the alleged violations in the Order. The information should be sent to Kenneth Champagne at the address on the letterhead and include the mailcode 8ENF-T, or call (800) 227-8917 X6238 or (303) 312-6238. If you wish to have an informal conference with EPA, you may also call or write Mr. Champagne. If you are represented by an attorney or have legal questions please call Marc Weiner at the above number extension 6913 or at (303) 312-6913.

We urge your prompt attention to this matter.

Sincerely,



Diane L. Sipe, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures  
Order  
SBREFA

cc: Park County Commissioners

Larry Robinson  
Wyoming Department of Environmental Quality  
Water Quality Division  
Herschler Building  
122 West 25<sup>th</sup> Street  
Cheyenne, WY 82002



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 300  
DENVER, COLORADO 80202-2466

APR 10 2001

Ref: 8ENF-T

Park County Commissioners  
c/o, Tim Morrison, Chair  
1002 Sheridan Avenue  
Cody, Wyoming 82414

RE: Notice of Safe Drinking Water  
Act Enforcement Action Against  
Blackwater Lodge, Inc.  
Amended Administrative Order  
Docket No. SDWA-8-99-02

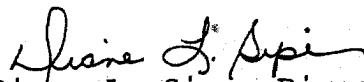
Dear County Commissioners:

Pursuant to Section 1414(a)(2)(B) of the 1996 amendments to the Safe Drinking Water Act (SDWA), the Environmental Protection Agency is required to notify an appropriate locally elected official of any action taken in a State that does not have primary enforcement authority for public water systems. The State of Wyoming does not have primary enforcement authority for public water systems under the SDWA.

An "Amended Administrative Order" (Order) is being issued under Section 1414 of the SDWA to Ms. Debbie Carlton as owner/operator of the Blackwater Lodge, Inc. located in Cody, Wyoming. The Order requires that the public water system take measures to return to compliance with the SDWA and the National Primary Drinking Water Regulations. Blackwater Lodge, Inc. is in violation of 40 CFR §§141.21(a), 141.63(b), 141.23(d), 141.201, 141.21(g)(1), 141.21(g)(2), and 141.31(b) for: failure to monitor for total coliform bacteria; exceeding the acute maximum contaminant level for total coliform bacteria; failure to monitor for nitrate; failure to provide public notice of the above violations; failure to report the acute MCL violation for total coliform bacteria to EPA no later than the end of the next business day; failure to report total coliform bacteria monitoring violations to EPA within 10 days after discovering the violation; and for failure to report SDWA violations to EPA within 48 hours.

A copy of the Order is enclosed for your information. The Order does not require any response or action by the County Commission. If you have any questions regarding this Order, please contact Kenneth Champagne at (800) 227-8917 extension 6238.

Sincerely,



Diane L. Sipe, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure  
Order

cc: Charlie Johnstone  
Tim French

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII

IN THE MATTER OF

Debbie Carlton, Owner  
Blackwater Lodge, Inc.  
Cody, Wyoming  
PWS ID # 56001424

Respondent

Proceedings under Section 1414(g)  
of the Safe Drinking Water Act,  
42 U.S.C. §300g-3(g)

AMENDED ADMINISTRATIVE ORDER

Docket No. SDWA-8-99-02

STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1414(g) of the Safe Drinking Water Act, (the Act), 42 U.S.C. §300g-3(g) and its implementing regulations, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region VIII. EPA filed a "Final Administrative Order" against Blackwater Lodge, Inc. on January 7, 1999, which is incorporated by reference herein.

FINDINGS

1. Ms. Debbie Carlton (Respondent) is an individual and therefore a "person" within the meaning of 40 CFR §141.2. Blackwater Lodge, Inc. was incorporated under the laws of the state of Wyoming on January 18, 1995. According to the Wyoming Secretary of State, Blackwater

Lodge's corporate status became defunct on August 21, 2000. Corporations are a "person" within the meaning of 40 CFR §141.2.

2. Respondent owns and operates a system, the Blackwater Lodge, Inc. Water System (the "System"), located in Park County, Wyoming for the provision to the public of piped water for human consumption.
3. The Blackwater Lodge, Inc. Water System has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" within the meaning of Section 1401(4) of the Act, 42 U.S.C. §300f(4), and a "non-community water system" within the meaning of 40 CFR §141.2.
4. Respondent owns and operates a public water system and is therefore a "supplier of water" within the meaning of Section 1401(5) of the Act, 42 U.S.C. §300f(5) and 40 CFR §141.2. Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. §300g, and its implementing regulations, 40 CFR Part 141.
5. According to a July 14, 2000 sanitary survey by the Midwest Assistance Program, Respondent operates a system that is supplied solely by a ground water source possibly under the direct influence of surface water, consisting of one spring, serves approximately 300 persons year round, has 16 service connections, and has

been identified as a public water system since January 1997.

#### FINDINGS OF VIOLATION

##### I.

1. 40 CFR §141.21(a) requires the owner and/or operators of public water systems to monitor the System's water at least once per quarter that the System provides water to the public to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria as stated in 40 CFR §141.63.
2. Respondent failed to monitor its water for contamination by total coliform bacteria during the 2<sup>nd</sup> (April - June) and 3<sup>rd</sup> (July - September) quarters 1997 and 2<sup>nd</sup> (April - June) and 3<sup>rd</sup> (July - September) quarters 1998, in violation of 40 CFR §141.21(a).

##### II.

1. 40 CFR §141.21 requires the owner and/or operator of a public water systems to monitor the System's water at least once per quarter to determine compliance with the MCL for total coliform bacteria as stated in 40 CFR §141.63.
2. 40 CFR §141.63(b) imposes and defines the acute MCL for total coliform bacteria as a fecal coliform positive or E. coli positive repeat sample, or any total coliform positive repeat sample following a fecal coliform

positive or E. coli positive routine sample.

3. Monitoring results submitted by Respondent for the System's water during the 3<sup>rd</sup> quarter 2000 exceeded the acute MCL for total coliform bacteria, in violation of 40 CFR §141.63(b).

### III.

1. 40 CFR §141.23(d) requires public water systems to monitor their water for nitrate to determine compliance with the nitrate MCL, as stated in 40 CFR §141.62.
2. Respondent failed to monitor the System's water for nitrate in 1996, 1997, and 2000, in violation of 40 CFR §141.23(d).

### IV.

1. 40 CFR §141.201 requires owners and/or operators of a public water system to notify the public of any National Primary Drinking Water Regulations ("NPDWR") violations, including violations of the MCL, maximum residual disinfection level ("MRDL"), treatment technique (TT) monitoring requirements, and testing procedures in 40 CFR Part 141.
2. Respondent has not provided public notice of the noncompliance detailed in the preceding Sections II, and III, in violation of 40 CFR §141.201. Please note, EPA did receive a copy of Respondent's public notice for the failure to monitor for total coliform bacteria during the 2<sup>nd</sup> (April - June) and 3<sup>rd</sup> (July - September)

quarters 1997 and 2<sup>nd</sup> (April - June) and 3<sup>rd</sup> (July - September) quarters 1998.

V.

1. 40 CFR §141.21(g) (1) requires public water systems that have exceeded the MCL for total coliform in §141.63 to report the violation to EPA no later than the end of the next business day after it learns of the violation.
2. Respondent failed to report the total coliform acute MCL violation to EPA by the next business day after it learned of the violation detailed in Section II, in violation of 40 CFR §141.21(g) (1).

VI.

1. 40 CFR §141.21(g) (2) requires public water systems that have failed to comply with a coliform monitoring requirement under 40 CFR §141.21 to report the monitoring violation to EPA within ten days after the System discovers the violation.
2. Respondent failed to report to EPA the coliform monitoring violations detailed in Section I, in violation of 40 CFR §141.21(g) (2).

VII.

1. 40 CFR §141.31(b) requires the Respondent to report any failure to comply with any NPDWRs (40 CFR Part 141) to EPA within forty-eight (48) hours.
2. Respondent has failed to report to EPA instances of the noncompliance detailed in Sections I, II, III, IV, and



V, in violation of 40 CFR §141.31(b).

ORDER

Based on the foregoing findings, and pursuant to the authority of §1414(g) of the Act, IT IS ORDERED:

1. Upon the effective date of this Order, Respondent shall comply with the requirement of 40 CFR §141.21(a) to perform quarterly bacteriological monitoring. Respondent shall comply with the MCLs stated in 40 CFR §141.63. Respondent shall report analytical results to EPA within the first 10 days of the end of the monitoring period, as required by 40 CFR §141.31(a).
2. By May 15, 2001, Respondent shall comply with EPA's recommendations of the July 14, 2000 sanitary survey report. Respondent shall: (1) determine the exact location of the spring used for drinking water; (2) construct an enclosed fence around the spring source to minimize the impact of wildlife and entry of unauthorized individuals/persons; (3) make improvements on the two concrete collection boxes and wooden roofs to seal the boxes to prevent the introduction of contaminants; (4) remove deep-rooted vegetation from around the two collection boxes; and (5) flush all distribution lines and clean all collection boxes, if these boxes have not been cleaned within 5 years. In addition, Respondent shall comply with any further

- recommendations made by the Midwest Assistance Program during their technical assistance visit scheduled for Spring 2001. By May 31, 2001, Respondent shall provide EPA with labeled photographs and written confirmation that this work has been completed.
3. By May 31, 2001, Respondent shall install chlorination to provide continuous disinfection and maintain a minimum chlorine residual of 0.2 mg/l throughout the distribution system. Chlorine residual shall be monitored and reported daily and included in the monthly reports discussed in paragraph 13 (e) and (f) of the Order Section. Respondent shall continue this interim measure until receiving written notice from EPA.
  4. By May 31, 2001, prior to opening for the season and after the above improvements have been completed, Respondent shall collect a special purpose sample and have it analyzed for total coliform bacteria by a certified laboratory. Respondent shall report analytical results, via phone or fax, to EPA immediately upon receiving the results.
  5. Within 5 days after the date of opening and closing for business, Respondent shall provide EPA with written notification of the date the water system opened and closed for the season.
  6. Upon the effective date of this Order, Respondent shall

comply with all sampling requirements specified in 40 CFR §141.21(b)(5). If Respondent's water system has one or more total coliform positive samples in a month, Respondent shall collect at least 5 routine samples during the next month the system provides water to the public. Respondent shall collect at least 5 routine samples during the month of June 2001 for the five (5) total coliform positive samples during the 3<sup>rd</sup> quarter 2000 monitoring period. Respondent shall report analytical results to EPA within the first 10 days following the end of the monitoring period, as required by 40 CFR §141.31(a).

7. By June 30, 2001, Respondent shall comply with the annual nitrate monitoring requirements stated in 40 CFR §141.23(d) to determine compliance with the nitrate MCL appearing at 40 CFR §141.62(b). Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 CFR §141.31(a).
8. The Surface Water Treatment Rule (SWTR) requires that each ground water source, which includes wells, infiltration galleries and springs, be assessed to determine if they are influenced by surface water. If a ground water source is determined to be under the influence of surface water, the system must either provide filtration and disinfection or meet the

filtration avoidance criteria specified in 40 CFR §141.71 and the disinfection requirements specified in 40 CFR §141.72(a). Based upon the findings of the July 14, 2000 sanitary survey by the Midwest Assistance Program and the acute total coliform MCL violation in 3<sup>rd</sup> quarter 2000, EPA has determined that a strong possibility exists that the Blackwater Spring is under the direct influence of surface water. For a final determination, Respondent shall conduct Microscopic Particulate Analysis (MPA) including analysis for cryptosporidium by immunofluorescence antibody (IFA) no later than June 15, 2001. The Respondent shall collect at least two samples from the spring during the months of April, May, or June 2001 when the spring is most susceptible to surface water infiltration, pursuant to 40 CFR §§141.2 and 141.70, which define groundwater under the direct influence of surface water, and Subpart H of the NPDWRs.

9. Respondent shall mail copies of the MPA results to EPA within 15 days of receipt from the laboratory, pursuant to 40 CFR §141.31(e). If the results from the two samples from the spring are inconclusive regarding risk of direct influence of surface water, EPA may require Respondent to take a third sample from the spring.
10. If Respondent's MPA results indicate its groundwater has no risk or low risk of influence from surface

water, EPA will notify Respondent in writing that (1) a third MPA sample is not required from the spring, and (2) the System's groundwater is not under the direct influence of surface water.

11. If Respondent's MPA results indicate that the Blackwater Spring is under the direct influence of surface water, the Respondent shall choose one of the following options to comply with the SWTR:
  - a) Within 18 months of notification by EPA that Respondent's groundwater is determined to be under the direct influence of surface water, Respondent shall install filtration and disinfection that meet the criteria for filtered systems specified in 40 CFR §§141.72(b) and 141.73; OR
  - b) Within 18 months of notification by EPA that Respondent's groundwater is determined to be under the direct influence of surface water, Respondent shall meet the filtration avoidance criteria specified in 40 CFR §141.71 and the disinfection requirements specified in 40 CFR §141.72(a); OR
  - c) Within 18 months of notification by EPA that Respondent's groundwater is determined to be under the direct influence of surface water, Respondent shall disconnect the spring and install a new water source, either by drilling a well or connecting to an existing municipal public water system, which

meets the MCLs for total coliform bacteria  
specified in 40 CFR §141.63; OR

d) Respondent shall cease to operate the Blackwater Lodge as a System for the provision to the public of water for human consumption through pipes or other constructed conveyances.

12. Within 2 months of notification by EPA that Respondent's groundwater is determined to be under the direct influence of surface water, Respondent shall select option 11 (a), (b), (c), or (d), and provide EPA a written plan for implementation of the selected option. This plan shall include, as applicable, proposed system modifications, filter specifications and efficiencies, estimated costs of modifications, and a schedule for construction of the project. The schedule shall include specific milestone dates, a final completion date, and shall be submitted to EPA for approval. The plan must be approved by EPA before construction may commence. Thereafter, Respondent shall submit quarterly progress reports to EPA indicating progress towards completion of the selected option. Progress reports shall be submitted each calendar quarter postmarked no later than the 15<sup>th</sup> of the month following the end of each calendar quarter.

13. Within 6 months of notification by EPA that Respondent's groundwater is determined to be under the

direct influence of surface water, Respondent shall perform interim monitoring as follows until the selected option has been installed and operating:

- a) Comply with the requirements of 40 CFR §141.74(b) (2) to monitor for turbidity of source water immediately prior to the first or only point of disinfectant application every four hours that the System serves water to the public. Submit monitoring results to EPA within the first 10 days following the end of each month, as required in 40 CFR §141.75.
- b) Comply with the requirements of 40 CFR §141.74(b) (1) to perform total coliform density measurements prior to disinfectant application once each time the turbidity of the source water exceeds 1 nephelometric turbidity unit (NTU). This is in addition to the monthly bacteriological monitoring. Submit monitoring results to EPA within the first 10 days following the end of each month, as required in 40 CFR §141.75.
- c) Comply with the requirements of 40 CFR §141.74(b) (3) to monitor for the following parameters necessary to determine the total inactivation ratio for each day that the System is in operation: (i) temperature of the disinfected water at least once per day at each residual

disinfectant concentration sampling point; (ii) if the System uses chlorine, the pH of the disinfected water at least once per day at each chlorine residual disinfectant concentration sampling point; (iii) the disinfectant contact time(s) must be calculated for each day during peak hourly flow; and (iv) the residual disinfectant concentration(s) before or at the first customer each day during peak hourly flow. Submit monitoring results and total inactivation ratio to EPA within the first 10 days following the end of each month, as required in 40 CFR §141.75.

- d) Comply with the requirements of 40 CFR §141.74(b)(4) to calculate *Giardia lamblia* and virus inactivation at the lowest daily value of residual disinfection concentration, and provide documentation to EPA that 3-log inactivation of *Giardia lamblia* and 4-log inactivation of virus is achieved before or after the first customer. Submit monitoring results to EPA within the first 10 days following the end of each month, as required in 40 CFR §141.75.
- e) Comply with the requirements of 40 CFR §141.74(b)(5) to monitor residual disinfectant concentration of the water entering the distribution system continuously or by taking one



grab sample per day and recording the lowest value each day. Report the lowest daily value to EPA within the first 10 days following the end of each month, as required in 40 CFR §141.75.

- f) Comply with the requirements of 40 CFR §141.74(b)(6) to monitor for residual disinfectant concentration (or heterotrophic plate count) at the same point in the distribution system and at the same time as total coliforms are sampled, as required in 40 CFR §141.21(a). Report the results to EPA within the first 10 days following the end of the month, as required by 40 CFR §141.75.
- g) Within 24 hours of determining that the turbidity level from the source water exceeded 5 NTU, Respondent shall notify EPA for consultation, and shall provide notice to the public as prescribed in 40 CFR §141.202 for Tier 1 public notice.

- 14. Within 6 months of notification by EPA that Respondent's groundwater is determined to be under the direct influence of surface water, Respondent shall comply with the requirement of 40 CFR §141.21(a) to perform monthly bacteriological monitoring. Respondent shall comply with the MCLs stated in 40 CFR §141.63. Respondent shall report analytical results to EPA within the first 10 days of the end of the monitoring period, as required by 40 CFR §141.31(a).

15. By June 30, 2001, Respondent shall (1) provide a notice to the public of the acute MCL for total coliform bacteria violation, specified in Section II under the Findings of Violation in this Order, and (2) initiate consultation with EPA to determine additional public notice requirements, in order to return to compliance with 40 CFR §§141.201, 141.202 and 141.205. This public notice shall be given in one or more of the following forms of delivery: (1) Appropriate broadcast media (such as radio and television); (2) Posting of the notice in conspicuous locations throughout the area served by the water system; (3) Hand delivery of the notice to persons served by the water system; or (4) Another delivery method approved in writing by EPA. Respondent shall comply with any additional public notification requirements that are established as a result of the consultation with EPA. Upon the effective date of this Order, Respondent shall comply with the publication notification requirements at 40 CFR §141.201 et seq. following any future NPDWR violation. Respondent shall submit a copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 CFR § 141.31(d).
16. By June 30, 2001, Respondent must provide public notice of the failure to monitor for nitrate violations, specified in Section III under the Findings of

Violation in this Order, in order to return to compliance with 40 CFR §§141.201, 141.204 and 141.205. This public notice shall be given by any one of the following methods: (1) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system; (2) by mail or direct delivery to each customer and service connection; AND (3) any other method reasonably calculated to reach other persons served by the System, if they would not normally be reached by the notice described in (1) and (2), including publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations. Upon the effective date of this Order, Respondent shall comply with the publication notification requirements at 40 CFR §141.201 et seq. following any future NPDWR violation. Respondent shall submit a copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 CFR §141.31(d).

17. Upon the effective date of this Order, Respondent shall comply with 40 CFR §141.21(g)(1) by reporting any total coliform MCL violation under 40 CFR §141.63 to EPA no later than the end of the next business day after it learns of the violation.
18. Upon the effective date of this Order, Respondent shall

comply with 40 CFR §141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 CFR §141.21 to EPA within ten (10) days after the System discovers the violation.

19. Except where a different reporting period is specified in paragraphs 17 and 18 above, upon the effective date of this Order, Respondent shall comply with 40 CFR §141.31(b) by reporting any failure to comply with any NPDWR (40 CFR Part 141) to EPA within 48 hours.
20. Reporting requirements specified in this Order shall be provided by certified mail to:

Kenneth Champagne  
U.S. EPA Region VIII (8-ENF-T)  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

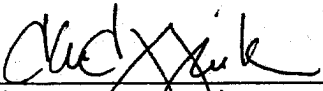
#### GENERAL PROVISIONS

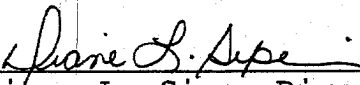
1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 CFR §141.1 et seq., or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
2. Violation of any term of this Order may subject Respondent to an administrative civil penalty of up to \$25,000 under Section 1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(B) or a civil penalty of not more than \$27,500 per day of violation, assessed by a U.S.

District Court, under Section 1414(g)(3)(A) and (C) of the Act, 42 U.S.C. §300g-3(g)(3)(A) and (C).

3. Violation of any requirement of the SDWA or its implementing regulations may subject Respondent to a civil penalty of not more than \$27,500 per day of violation, assessed by an appropriate U.S. District Court, under Section 1414(g)(3)(A) and (C) of the Act, 42 U.S.C. §300g-3(g)(3)(A) and (C).
4. The effective date of this Order shall be the date of issuance of this Order.

Issued this 10th day of April, 2001

  
\_\_\_\_\_  
Michael T. Risner, Director  
David J. Janik, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice

  
\_\_\_\_\_  
Diane L. Sipe, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice



*Office of Enforcement and Compliance Assurance*  
**INFORMATION SHEET**

## U.S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and State environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

### EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. Many public libraries provide access to the Internet at minimal or no cost.

EPA's Small Business Home Page (<http://www.epa.gov/sbo>) is a good place to start because it links with many other related websites. Other useful websites include:

*EPA's Home Page*  
<http://www.epa.gov>

*Small Business Assistance Programs*  
<http://www.epa.gov/ttn/sbap>

*Compliance Assistance Home Page*  
<http://www.epa.gov/oeca/oc>

*Office of Site Remediation Enforcement*  
<http://www.epa.gov/oeca/osre>

### Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance on environmental requirements.

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs. Key hotlines include:

EPA's Small Business Ombudsman  
(800) 368-5888

Hazardous Waste/Underground Tanks/  
Superfund  
(800) 424-9346

National Response Center  
(to report oil and hazardous substance spills)  
(800) 424-8802

Toxics Substances and Asbestos Information  
(202) 554-1404

Safe Drinking Water  
(800) 426-4791

Stratospheric Ozone and Refrigerants  
Information  
(800) 296-1996

Clean Air Technical Center  
(919) 541-0800

Wetlands Hotline  
(800) 832-7828

Continued on back

Office of Regulatory Enforcement Website: <http://www.epa.gov/oeca/ore.html>





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
Phone 800-227-8917  
<http://www.epa.gov/region08>

Ref:8 ENF-T

MAY 16 2003

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Debbie Carlton, Owner  
Blackwater Lodge, Inc.  
1516 Northfork Highway  
Cody, WY 82414

Re: Violation of Administrative Order  
Docket No. SDWA-08-99-02  
Blackwater Lodge  
PWS ID # WY5601424

Dear Ms Carlton:

On April 10, 2001, the US Environmental Protection Agency (EPA) issued an Amended Administrative Order, Docket No. SDWA-08-99-02 ordering your compliance with the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300f et seq., and its implementing regulations, the National Primary Drinking Water Regulations (NPDWRs) 40 CFR Part 141.

Our records indicate that you are in violation of the Amended Administrative Order (the Order). The Order requires the Blackwater Lodge to:

1. Comply with 40 CFR §141.23(d), which requires public water systems to monitor annually for nitrate to determine compliance with the nitrate Maximum Contaminant Limit (MCL) as stated in 40 CFR §141.62(b).

EPA has not received annual nitrate results for 2001 and 2002. If monitoring has been completed, send the results to EPA immediately. You must monitor for nitrate for 2003 immediately upon receipt of this letter and submit results to EPA upon receipt from the laboratory.

2. Comply with paragraphs 3 and 13 (e) and (f) of the Order, which required the Respondent to install continuous chlorination by May 31, 2001, and maintain a minimum chlorine residual of 0.2 mg/l throughout the distribution system.



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Chlorine residual was to be monitored daily at the same time and location as total coliform samples are taken, and reported monthly to EPA within the first 10 days following the end of each month.

EPA has not received any chlorine residual monitoring results as required by the Order. Respondent must immediately install continuous chlorination if it has not already been installed, monitor chlorine residual daily, and report chlorine residual levels to EPA monthly during the time the Blackwater Lodge is open to the public as required by the Order. If disinfection equipment has been installed, please provide EPA information regarding the model of equipment that was installed within 15 days of receipt of this letter. If no equipment has been installed, provide EPA a letter within 15 days indicating the schedule for installation.

3. Comply with 40 CFR §141.21 which requires public water system to collect one total coliform sample per quarter that the system provides water to the public to determine compliance with the total coliform MCL as stated in 40 CFR §141.63.

EPA has not received any total coliform monitoring results for the 3<sup>rd</sup> quarter of 2001 and the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2002. If monitoring has been completed for these quarters, send the results to EPA immediately. If monitoring has not been completed you must ensure that you take all future required quarterly bacteriological samples.

4. Comply with paragraphs 15 and 16 of the Order, and 40 CFR §141.201 which required Respondent to provide public notice by June 30, 2001, for failure to comply with the acute total coliform MCL and failure to monitor for nitrate.

EPA has not received a copy of the public notice for the violations in the Order and for the violations incurred since the Order was issued. You must issue this public notice immediately and send a copy to EPA.

5. Comply with paragraph 18 and 40 CFR §141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 CFR §141.21 to EPA within 10 days after the system discovers the violation.

EPA's records show that Respondent failed to report the total coliform monitoring violations listed under item 3 in this letter within the 10 days as required.

6. Comply with paragraph 19 and 40 CFR §141.31(b) by reporting to EPA any failure to comply with any National Primary Drinking Water Regulations (40 CFR Part 141) within 48 hours.

EPA's records indicate that Respondent failed to notify EPA of the violations which occurred subsequent to the issuance of the Order, as required by 40 CFR §141.31(b).

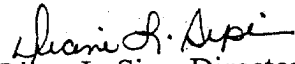
You must take immediate action to comply with the NPDWRs, 40 CFR Part 141, and Administrative Order, Docket No. SDWA-08-99-02. EPA is considering additional enforcement action as a result of your non-compliance with the Order. Violating an Administrative Order may lead to (1) a penalty of up to \$27,500 per day per violation of the Order, and/or (2) a court injunction ordering you to comply.

If you have any questions or wish to have an informal conference with EPA, you may contact Marc Weiner at (303)312-6913 or at the following address:

Marc Weiner  
Enforcement Attorney  
U.S. EPA, Region VIII (8-ENF-L)  
999 18th Street, Suite 300  
Denver, Colorado 80202-246

We urge your prompt attention to this matter.

Sincerely,

  
Diane L. Sipe, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

cc: Larry Robinson, WY DEQ  
Karl Musgrave, WY DOH